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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CAROL MARY RINES,
ROBERT H. RINES, and JUSTICE C. RINES

Appeal 2008-5115
Application 09/039,176
Technology Center 2600

Decided:¹ February 11, 2009

Before KENNETH W. HAIRSTON, JOHN A. JEFFERY,
and THOMAS S. HAHN, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's
rejection of claims 16-20, 23, 25, 27, 28, 30, 31, 33, 35, 36, and 38-46.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Claims 32 and 37 have been withdrawn from consideration.² We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

STATEMENT OF THE CASE

Appellants invented a system for use in a vehicle that operates various devices responsive to voice control. Specifically, voice-controlled switching means are programmed with predesignated separate voice commands for respectively controlling separate operation of distinct components of a vehicular entertainment deck (e.g., a tape or disc player components and dictation recorder/player) as well as a cellular radio telephone.³ Claim 23 is illustrative:

23. In a driver-operated vehicle provided with a steering wheel region and a vehicle entertainment deck including each of (1) a pre-recorded storage medium player and (2) a driver live dictation recorder/player components, and a vehicle cellular radio telephone for use by a driver in the vehicle, apparatus for enabling said driver, while seated at the steering wheel region of the vehicle, to operationally access a predetermined component of the entertainment deck and also to access the cellular radio telephone, all in a diversionless manner with full attention to driving, said apparatus comprising separate control switches for turning each of said entertainment components (1) and (2) on and off;

a further control switch for enabling the activating and deactivating of the cellular radio telephone;

² Although the Examiner rejected claim 37 (Ans. 3), it depends from claim 32 which Appellants previously indicated as cancelled (*see Appeal Brief filed Sept. 15, 2006, at 1 and Appeal Brief filed Mar. 9, 2007, at 2*). In the most recent Brief, however, claim 32 has been indicated as withdrawn (Br. 3). *See also* Notification of Non-Compliant Appeal Brief mailed June 6, 2007. Accordingly, based on the record before us, we presume that claim 37 was likewise intended to be withdrawn and therefore is not before us.

³ *See generally* Spec. 4-6, 16-17; Abstract; Figs. 1-3.

and voice-controlled switching means programmed with a plurality of predesignated separate voice commands for respectively enabling separate operation of each of said predetermined entertainment deck components (1) and (2) and also of the cellular radio telephone, namely, a voice command for the storage-medium player, a separate voice command for the dictation recorder, and a separate voice command for the cellular radio telephone;

the voice-controlled switching means being responsive to the driver selectively speaking such predesignated separate voice commands live at said steering wheel region for thereupon effecting the individual activating of the corresponding control switch.

The Examiner relies on the following prior art references to show unpatentability:

Glotzbach	US 4,677,429	Jun. 30, 1987
Ishikawa	US 4,698,838	Oct. 6, 1987
Dubus	US 4,731,811	Mar. 15, 1988

The Examiner rejected claims 16-20, 23, 25, 27, 28, 30, 31, 33, 35, 36, and 38-46 under 35 U.S.C. § 103(a) as unpatentable over Glotzbach, Dubus, and Ishikawa (Ans. 3-7).⁴

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Brief and the Answer⁵ for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make

⁴ Although the Examiner includes claim 37 in this rejection (Ans. 3), it is treated as withdrawn. See n.1, *supra*, of this opinion. Also, the Examiner withdrew a rejection under § 112 (Ans. 3). Accordingly, only the Examiner's rejection under § 103 is before us.

⁵ Throughout this opinion, we refer to the Appeal Brief filed Jul. 31, 2007 and the Examiner's Answer mailed Nov. 1, 2007.

in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

In the rejection, the Examiner finds that Glotzbach discloses all of the claimed subject matter except for:

- (1) a vehicle cellular radio telephone used by a driver while seated at the steering wheel region;
- (2) a voice controlled switching arrangement responsive to the driver selectively speaking predesignated separate voice commands;
- (3) transmitting stored or received information over the telephone;
- (4) a dictation recorder or tape that is operated with the radio telephone; and
- (5) switching being effected by time or the number of dictation recordings.

The Examiner, however, relies on Ishikawa and Dubus for teaching these features and concludes that the claims would have been obvious to ordinarily skilled artisans in view of the collective teachings of the cited references (Ans. 3-7).

Claims 16-20, 23, 25, 28, 30, 31, 33, and 38

Regarding representative claim 23,⁶ Appellants acknowledge that Glotzbach pertains to Appellants' problem of achieving substantially

⁶ Appellants argue two groups of claims: (1) claims 16-20, 23, 25, 28, 30, 31, 33, 38, and (2) claims 35, 36, and 39-46 (Br. 19-20). Accordingly, we select claim 23 as representative of the first group. *See* 37 C.F.R. § 41.37(c)(1)(vii). However, since Appellants argue claims 40-43 and 45 separately in the second group (Br. 20), we therefore treat these claims separately.

diversionless driver operation of an entertainment deck while driving. Appellants, however, note that, unlike the claimed invention, Glotzbach requires the operator to push buttons in response to voice-synthesized announcements prior to the microcomputer providing control signals to appropriate devices. Appellants contrast this functionality with the claimed invention where each separate device has its own control switch that is responsive to a separate voice command. As such, Appellants contend, the claimed invention merely requires the driver to speak predesignated commands live at the steering wheel to individually activate a corresponding control switch (Br. 17).

Appellants add that Dubus merely uses voice words for testing the radio telephone's integration routine and fails to disclose using the driver's live spoken words for switching the radio on and off (Br. 18-19).

Claims 35, 36, and 39-46

Regarding the second claim grouping, Appellants argue that the cited prior art does not teach or suggest *relaying* (1) dictation recorder playback; (2) disc player content; or (3) received radio transmissions over the cell phone as claimed in claims 40, 43, and 45, respectively (Br. 20; emphasis added). The Examiner cites Dubus as teaching these limitations (Ans. 5, 9-10).

The issues before us, then, are as follows:

ISSUES

Under § 103, have Appellants shown that the Examiner erred in combining the teachings of Glotzbach, Dubus, and Ishikawa to arrive at the claimed invention? This main issue turns on the following related issues:

(1) Do the collective teachings of cited prior art teach or suggest a vehicle with a voice-controlled switching means responsive to predesignated separate voice commands to separately enable (a) a storage-medium player; (b) a dictation recorder; and (c) a cellular radio telephone, respectively, as claimed in representative claim 23?

(2) Does Dubus in conjunction with the other cited prior art teach or suggest the relaying functionality recited in claims 40, 43, and 45?

(3) Is the Examiner's reason to combine the teachings of Glotzbach, Dubus, and Ishikawa supported by articulated reasoning with some rational underpinning to justify the Examiner's obviousness conclusion?

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence:

Glotzbach

1. Glotzbach discusses a Japanese published patent application No. JP57146317 ("Nojiri") that is said to disclose a method and apparatus of controlling a vehicle that includes (1) a radio control unit; (2) stereo control unit; and (3) an air conditioner control unit coupled to a microcomputer (Glotzbach, col. 2, ll. 57-61).

2. Glotzbach notes that a single push-button switch is mounted in the center of the steering wheel in Nojiri and is used to manipulate the radio, stereo unit, or air conditioner (Glotzbach, col. 2, ll. 65-67).

3. According to Glotzbach, Nojiri provides a microphone and a sound recognition circuit for inputting voice commands to the microcomputer. This sound recognition system may be used in place of, or together with, the switch to enable the microcomputer to detect a command and respond to instructions from the driver of the vehicle (Glotzbach, col. 2, ll. 63-65; col. 2, l. 67-col. 3, l. 5).

Ishikawa

4. Ishikawa discloses a steering wheel with a telephone 2 which includes a speaker 2b, microphone 2a, and talk lever 38. Depressing the talk lever enables conversation to be made (Ishikawa, col. 5, ll. 45-55; col. 8, ll. 6-10; col. 9, ll. 34-col. 10, l. 11; Figs. 1, 2(b), 7).

Dubus

5. Dubus discloses a voice-controlled vehicular radiotelephone system with speech recognition capabilities (Dubus, Abstract; col. 1, ll. 42-46).

6. As shown in Figure 3, upon initialization, either the manual or automatic mode is tested (Step 101). The automatic mode is tested by recognizing a particular word (i.e., “TELEPHONE,” “READING,” “SCRATCHPAD,” or “HELP”) (Step 102) and executing the corresponding routine responsive to the recognized word (Steps 103-106) (Dubus, col. 4, l. 48-col. 5, l. 15; Fig. 3).

7. The scratchpad function enables the driver to create messages in the scratchpad via recordings (Dubus, col. 7, l. 48–col. 8, l. 51; Figs. 8, 9).

8. The telephone function enables the driver to dial a telephone number by pronouncing the appropriate digits or keyword to establish telephone communication (Dubus, col. 7, ll. 29-47; col. 8, l. 52–col. 9, l. 12; Figs. 7, 10).

9. If a standby position is detected, the radio telephone is used in an “answerer” function with either confidential or public access. If the confidential mode is entered, confidential operation is permitted such as allowing the hearing of certain scratchpad messages or recording messages on the scratchpad. In the public mode, however, messages can be recorded using a tape recorder which can be used to create scratchpad messages (Dubus, col. 9, ll. 39-52; col. 9, l. 62 – col. 10, l. 12; Fig. 11).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

Discussing the question of obviousness of claimed subject matter involving a combination of known elements, *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), explains:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103

likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* [v. AG Pro, Inc., 425 U.S. 273 (1976)] and *Anderson's-Black Rock[, Inc. v. Pavement Salvage Co.]*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

KSR, 127 S. Ct. at 1740. If the claimed subject matter cannot be fairly characterized as involving the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, a holding of obviousness can be based on a showing that “there was an apparent reason to combine the known elements in the fashion claimed.” *Id.* at 1740-41. Such a showing requires

“‘some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”

Id. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

If the Examiner’s burden is met, the burden then shifts to the Appellants to overcome the *prima facie* case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

Claims 16-20, 23, 25, 28, 30, 31, 33, and 38

Based on the record before us, we are not persuaded that the Examiner erred in rejecting representative claim 23 over the collective teachings of Glotzbach, Ishikawa, and Dubus. First, we acknowledge that Glotzbach indicates that a single push-button switch can be used to manipulate the radio, stereo, or air conditioner in Nojiri (FF 2). But Glotzbach also indicates that a sound recognition system (i.e., for inputting voice commands) may be used *in place of*, or together with, this switch to enable the microcomputer to detect a command and respond to instructions from the driver of the vehicle (FF 3; emphasis added). Thus, Glotzbach teaches that a sound recognition system for controlling distinct vehicular components (i.e., the radio, stereo, or air conditioner) can be used in lieu of a push-button.

We see no error in combining this fundamental teaching with Dubus and Ishikawa to arrive at the claimed invention. First, Dubus' voice-controlled vehicular radiotelephone system recognizes various spoken words to execute a corresponding function (FF 5-6). Despite the fact that this recognition is performed in conjunction with a test procedure (FF 6) as Appellants indicate (Br. 18-19), ordinarily skilled artisans would nonetheless understand from Dubus that distinct vehicular functions can be separately controlled via corresponding voice commands. Moreover, we find no error in the Examiner's position (Ans. 8) that two of these controlled functions in Dubus, namely the scratchpad and telephone functions (FF 7-8), teach or suggest the recited dictation recorder and cellular telephone components, respectively. Nor do we find error in the Examiner's position (Ans. 9) that

Glotzbach at least suggests a vehicle entertainment deck with a pre-recorded storage medium player and radio. *See FF 1-2.*

As such, we find no error in the Examiner's position based on these collective teachings, particularly since Glotzbach likewise teaches sound recognition to control distinct vehicular functions otherwise controlled via a switch on the steering wheel (FF 1-3). Moreover, we find no error in combining these teachings with Ishikawa which teaches controlling a telephone associated with a vehicle's steering wheel (FF 4). In short, the Examiner's combining this teaching along with the teachings of the other cited references to arrive at the claimed invention is supported by articulated reasoning with some rational underpinning to justify the Examiner's obviousness conclusion.

For the foregoing reasons, Appellants have not persuaded us of error in the Examiner's obviousness rejection of representative claim 23 based on the collective teachings of Glotzbach, Dubus, and Ishikawa. Therefore, we will sustain the Examiner's rejection of that claim, and claims 16-20,⁷ 25, 28, 30, 31, 33, and 38 which fall with claim 23.

⁷ Although Appellants nominally argue claims 16-20 separately (Br. 20), Appellants merely indicate what these claims recite without particularly pointing out the alleged errors in the Examiner's rejection pertaining to these recited limitations. Accordingly, we do not consider Appellants' remarks concerning claims 16-20 sufficient to qualify as separate arguments for patentability of these claims. *See 37 C.F.R. § 41.37(c)(1)(vii)* ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim."). In any event, these comments do not persuasively rebut the Examiner's *prima facie* case of obviousness for these claims for the reasons indicated by the Examiner (Ans. 9).

Claims 35, 36, and 39-46

We will not, however, sustain the Examiner's rejection of claims 40-43 and 45 which call for, in pertinent part, means operable simultaneously with the operation of the cellular radio telephone for *relying* (a) dictation recorder playback; (b) disc player content; or (c) received radio transmissions over the cellular radio telephone as claimed in claims 40, 43, and 45, respectively.

At the outset, we note that the key limitations in dispute constitute means-plus-function limitations. As such, these limitations must be construed in accordance with 35 U.S.C. § 112, ¶ 6 by "look[ing] to the specification and interpret[ing] that language in light of the corresponding structure, material, or acts described therein, and equivalents thereof, to the extent that the specification provides such disclosure." *In re Donaldson Co., Inc.*, 16 F.3d 1189, 1193 (Fed. Cir. 1994) (en banc).

Appellants refer to pages 11 and 14 of the Specification as corresponding to these means-plus-function limitations (Br. 10). Turning to page 11 of the Specification, the discussion makes clear that dictation or some other message can "be transmitted automatically to a remote station to which the cellular radio telephone is dialed" (Spec. 11:9-12). *See also* Spec. 12:2-13:7(describing how to transmit dictation to a remote station via the cellular radio telephone system). Pages 14 and 15 of the Specification provide similar support with respect to received radio messages or programs. *See* Spec. 14:14-15:10 (noting that messages or programs received by the vehicle AM/FM radio receiver can be transmitted to a remote station via the cellular radio telephone system).

In light of the Specification, we therefore construe the means-plus-function limitations of claims 40, 43 and 45 as requiring relaying the information *to a remote station or user* via the cellular radio telephone. *See Donaldson*, 16 F.3d at 1193.

With this construction, we find that the Examiner erred in relying on the functionality of Dubus as suggesting these limitations. The Examiner has not pointed to—nor can we find—anything in Dubus or any of the other cited prior art that would reasonably teach or suggest the recited relaying functionality or its equivalents when the limitations are construed in light of the Specification. Although Dubus uses a radiotelephone system to ultimately communicate the contents of information stored in recordings and the scratchpad to the user (*see* FF 5-9), the radiotelephone system would, at best, merely pass along or “relay” that information “over” the radiotelephone *to the driver*.

As such, we find no error in the Examiner’s obviousness rejection of claims 35 and 36 as the scope of these claims simply does not preclude this broader interpretation. But there is simply nothing on this record to suggest any relaying of information *to a remote station or user* using the telephone system as required by the means-plus-function limitations of claims 40, 43, and 45.

For the foregoing reasons, Appellants have not persuaded us of error in the Examiner’s obviousness rejection of claims 35, 36 and 39 which were not separately argued with particularity. Appellants have, however, persuaded us of error with respect to the rejection of claims 40, 43, and 45. We will also not sustain the Examiner’s rejection of dependent claims 41, 42, 44, and 46 for similar reasons.

CONCLUSIONS

Under § 103, Appellants have not shown that the Examiner erred in rejecting claims 16-20, 23, 25, 27, 28, 30, 31, 33, 35, 36, 38, and 39.

Appellants, however, have shown that the Examiner erred in rejecting claims 40-46 under § 103.

ORDER

The Examiner's decision rejecting claims 16-20, 23, 25, 27, 28, 30, 31, 33, 35, 36, and 38-46 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

KIS

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